

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 04-3474

United States of America,

Appellee,

v.

Wilton Antonio Cerna-Salguero,
also known as Juan Antonio Reyes,

Appellant.

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Appeal from the United States
District Court for the Southern
District of Iowa.

[PUBLISHED]

Submitted: January 18, 2005

Filed: March 3, 2005 (Corrected: 3/4/05)

Before MORRIS SHEPPARD ARNOLD, FAGG, and GRUENDER, Circuit Judges.

PER CURIAM.

Wilton Antonio Cerna-Salguero pleaded guilty to one count of being an illegal alien found in the United States following deportation in violation of 8 U.S.C. § 1326(a). The district court* increased Cerna-Salguero's sentence under 8 U.S.C. § 1326(b)(2), which provides a maximum sentence of twenty years if the alien had an earlier aggravated felony conviction.

*The Honorable Robert W. Pratt, United States District Judge for the Southern District of Iowa.

Cerna-Salguero appeals arguing § 1326(b)(2) is a separate crime and thus he has a Sixth Amendment right to a jury trial for violating and being sentenced under the statute. Cerna-Salguero acknowledges the Supreme Court rejected this argument in Almendarez-Torres v. United States, 523 U.S. 224 (1998), and declined to revisit Almendarez-Torres in Apprendi v. New Jersey, 530 U.S. 466, 489-90 (2000), which held, “Other than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt.” Cerna-Salguero also acknowledges we have continued to follow Almendarez-Torres after Apprendi. United States v. Perez-Perez, 337 F.3d 990, 997 (8th Cir. 2003) (stating plain language of Apprendi excepts the fact of earlier convictions from its holding, and thus § 1326(b)(2) does not violate the Sixth Amendment); United States v. Alvarez, 320 F.3d 765, 767 (8th Cir. 2002) (stating we must follow Almendarez-Torres until overruled by the Supreme Court); United States v. Kempis-Bonola, 287 F.3d 699, 702 (8th Cir. 2002) (having refused to revisit Almendarez-Torres in Apprendi, “the legal landscape is clear: Almendarez-Torres has not been overruled”). Cerna-Salguero candidly acknowledges in his brief that his claim has been rejected by the Supreme Court and “unless pending [guidelines] cases change the law” his appeal fails. The Supreme Court has now decided these cases, and in so doing the Court did not overrule Almendarez-Torres. See United States v. Booker, 125 S. Ct. 738, 756 (2005).

We thus reject Cerna-Salguero’s Sixth Amendment challenge to his sentence, and affirm. See 8th Cir. R. 47A(a).
